

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF OREGON**

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| In re |) | Case No. 14-32565-11 |
| |) | |
| DR. BOTT, LLC |) | SUPPLEMENT AND AMENDMENT TO |
| |) | PRIOR NOTICE [Dkt #9] OF PERFECTION |
| Alleged Debtor. |) | AND SUBSTITUTED SEIZURE BY |
| |) | HERSCHEL SUPPLY CO., LTD. |
| |) | PURSUANT TO CODE SECTION 546(b)(2) |

Now Comes Herschel Supply Co., Ltd. ("Herschel"), and hereby files this clarifying Supplement and Amendment to its prior filed [Dkt #9] Notice of Perfection and Substituted Seizure of goods, and shows as follows:

Herschel is now statutorily enjoined under the automatic stay from seizing goods owned by Herschel that were delivered to the Alleged Debtor. Accordingly, Herschel filed the above-referenced Notice [Dkt #9] under Code Section 546(b)(2) to perfect its interest and right of possession and control over goods delivered by Herschel to the Alleged Debtor prior to commencement of this case, and to perfect Herschel's interest in proceeds collected or owed to the Alleged Debtor from the sale of such Herschel goods by the Alleged Debtor to Apple Computer or to other third parties.

Delivery as Security Consignment to an Alleged Debtor That Was Generally Known by its Creditors to Be Engaged in the Sale of Goods Owned by Others.

Herschel delivered goods pre-petition to the Alleged Debtor as a mere conduit for subsequent delivery and sale of Herschel's goods to Apple Computer retail stores; further, all goods delivered by Herschel to the Alleged Debtor that were not sold by the Alleged Debtor to Apple were to be returned to Herschel and in fact this was the historic course of dealing and ordinary course of business of the parties. Payment to Herschel by the Alleged Debtor for subsequent sale of Herschel's goods was in fact held and reduced by the amount of Herschel's

product on hand and not sold by the Alleged Debtor. Accordingly, the most accurate description of the contractual arrangement between Herschel and the Alleged Debtor was that all goods delivered by Herschel to the Alleged Debtor were in fact a “security consignment,” *Wolverine Fire Apparatus Co. of Sherwood Michigan v. FVTS*, 465 B.R. 808, 821-822 (Bkrcty.E.D.Wis. 2012). Indeed, each and every item so delivered to the Alleged Debtor by Herschel bears the physical trade mark and logo of Herschel. The Alleged Debtor was known by Herschel as a consignor that at all relevant times had been substantially engaged in the business of “selling the goods of others,” UCC Section 102. Upon information and belief, it was at all relevant times also generally known by the other creditors of the Alleged Debtor that the Alleged Debtor was engaged substantially in the business of selling goods owned by others. Consequently, Herschel asserts that it has a first priority property interest and right of return and/or equitable or statutory lien upon all goods which Herschel delivered to the Alleged Debtor. *Fariba v. Dealer Services Corporation*, 178 Cal.App.4th 156, 70 UCC Rep.Serv.2d 193 (Ct.App. 2009). As a result of Herschel’s filing of its Notice under Code Section 546(b)(2) and this clarifying Supplement and Amendment to such Notice of Perfection, Herschel has perfected its first priority claim not only to goods delivered by Herschel to the Alleged Debtor, but also to all sales proceeds arising from the sale of such goods to third parties.

Alternative Characterizations.

Herschel alternatively suggests that it holds the rights of a reclaiming security consignment seller to whom misrepresentations of solvency were made in writing by the Alleged Debtor to Herschel within 90 days of delivery of goods by Herschel to the Alleged Debtor. Demand of the Alleged Debtor for return to Herschel of all Herschel goods was made prior to the commencement of this case, and such a demand for return of all such goods, under security consignment, under storage arrangement, or as reclaiming seller are again restated and Notice of such demand for immediate return is hereby given pursuant to Code Section 546(b)(2).

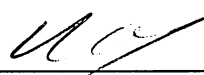
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1 **Herschel Objects to the Use of its Cash Collateral.**

2 Herschel hereby notifies the Alleged Debtor and its counsel, pursuant to Code Section
3 546(b)(2), that Herschel objects to the use of cash proceeds arising from the sale of Herschel
4 goods, as such proceeds are subject to first priority legal claims by Herschel.

5 DATED this 13th day of May, 2014.

6 LANDYE BENNETT BLUMSTEIN LLP

7
8 By: 
9 Conde T. Cox, OSB #090977
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CERTIFICATE OF SERVICE

I hereby certify that on May 13, 2014, I served the foregoing **SUPPLEMENT AND AMENDMENT TO PRIOR NOTICE [DKT #9] OF PERFECTION AND SUBSTITUTED SEIZURE BY HERSCHEL SUPPLY CO., LTD. PURSUANT TO CODE SECTION 546(b)(2)** on the following individual(s):

Gary I. Grenley
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by U.S. Mail.

LANDYE BENNETT BLUMSTEIN LLP

By: 
Jami L. Queener, Assistant to Conde T. Cox
Of Attorneys for Herschel Supply Co., Ltd.